



August 23, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition in Support of the Kellogg & Sovereign Consulting, LLC Request for Waiver of Funding Year 2019 Rural Health Care Program Filing Deadline, WC Docket 02-60

Dear Secretary Dortch:

The Schools, Health & Libraries Broadband Coalition (“SHLB Coalition” or “SHLB”)¹ hereby submits these Comments in response to the Public Notice² inviting comments on the Request for Waiver of Funding Year 2019 Rural Health Care Program Filing Deadline filed by Kellogg & Sovereign Consulting, LLC.³

A waiver of the filing deadline for the Kellogg & Sovereign Rural Health Care (RHC) program applicants is in the public interest and is consistent with Commission precedent. The Commission has granted waivers of deadlines in the universal service programs where natural disasters have affected program participants’ ability to comply with those deadlines.⁴ Similar

¹ The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer organizations. See <http://shlb.org/about/coalition-members> for a current list of SHLB Coalition members.

² See *Wireline Competition Bureau Seeks Comment on Kellogg & Sovereign Consulting, LLC Request for Waiver*, WC Docket No. 02-60, Public Notice, DA 19-697 (Wireline Comp. Bur. rel. May 30, 2019) available at <https://docs.fcc.gov/public/attachments/DA-19-697A1.pdf> (Public Notice).

³ Kellogg & Sovereign Consulting, LLC Request for Waiver of Funding Year 2019 Rural Health Care Program Filing Deadline, WC Docket 02-60 (June 20, 2019), <https://www.fcc.gov/ecfs/filing/10620237120025> (Request for Waiver).

⁴ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 18-1101 (Wireline Comp. Bur. Oct. 26, 2018) (*Hurricane Michael Relief Order*); *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket Nos. 02-6 et al., Order, DA 17-984 (Wireline Comp. Bur. Oct. 6, 2017) (*2017 Hurricanes Relief Order*); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 19-15 (Wireline Comp. Bur. Jan. 3, 2019) (*California Wildfires Relief Order*).

to the circumstances in those Commission orders, Kellogg & Sovereign was unable to timely file funding requests for seven health care providers due to the extreme weather conditions that caused a state of emergency in Oklahoma in the days before the FY 2019 filing deadline. Further, as explained in its Request for Waiver, Kellogg & Sovereign was prepared to file the funding requests of its rural health care providers within just a few days of the deadline—a reasonable time—and it would have done so if allowed by USAC’s filing system.⁵

Additionally, SHLB would respectfully suggest that the Commission expand the 14-day grace period for late-filed applications available for E-rate applicants to the rural health care providers in the RHC program. Prior to the past few years, RHC applicants were free to submit their applications at any time during the funding year.⁶ It was not until 2016 that the demand for funding exceeded the cap, which caused the Commission to adopt filing windows with hard-and-fast deadlines.⁷

As the Bureau is aware, in the E-rate program, the Commission has found it is in the public interest to grant a waiver of the application deadline for schools and libraries that file their applications within 14 days of the submission deadline.⁸ The same rationales for allowing the 14-day grace period that the Commission referenced in *Academy of Math and Science* are also present in the RHC program:

- Filing within 14 days would not impair the administration of the program given that USAC has to conduct a thorough review of applications that can take months;
- Most of the people filling out the forms in the RHC program have other primary jobs, namely taking care of patients;
- Unexpected events may cause delays, such as weather-related events (such as those cited in the Request for Waiver) or the serious illness of a staff member assigned to complete the forms;
- There is no failure to adhere to core program requirements.⁹

⁵ USAC’s filing system will not allow applications to be filed after 11:59 p.m. Eastern.

⁶ *Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588 (2016).

⁷ *Id.*

⁸ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259 ¶ 8 (2010) (*Academy of Math and Science Order*) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days after the FCC Form 471 filing window deadline).

⁹ *Id.* ¶ 9.

We acknowledge that demand for the RHC program has been at or near the cap in the past few years. We note, however, that the Commission allowed late-filed E-rate applications when demand exceeded the cap in the E-rate program.¹⁰

We understand that the order the Commission adopted at its August 1 meeting – after the date of this year’s filing window and after the request for waiver filed by Kellogg & Sovereign – establishes rules for filing windows for applications submitted beginning in Funding Year 2021.¹¹ The *RHC Telehealth Order* also states that all funding requests outside of the filing window will not be accepted unless and until USAC opens another filing window. The E-rate program also had filing deadlines in its rules when the Commission allowed the 14-day grace period. In addition, the *RHC Telehealth Order* did not explicitly state any intent to deviate from past grants of waivers or place any restrictions on the Wireline Competition Bureau’s ability to grant such waivers under its delegated authority.¹² As such, we do not believe this new rule prohibits the Commission or the Bureau, on delegated authority, from adopting a waiver standard similar to that adopted in the E-rate program.

Further, a 14-day grace period will not conflict with the Commission’s directive to USAC to determine and publish a gross demand estimate 30 days prior to the funding year. In the *RHC Telehealth Order*, the Commission adopted a rule that the filing window close no later than 90 days before the start of the funding year.¹³ Even with the 14-day grace period, USAC will have six weeks to determine and publish a gross demand.

¹⁰ *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014) (“The E-rate funding cap has gone virtually unchanged for 17 years. In 1997, the Commission adopted a \$2.25 billion annual funding cap for the E-rate program. . . . Since then, however, actual demand for E-rate support has exceeded that cap in all but one funding year.”); *see also, e.g., Academy of Math and Science Order; Requests for Waiver and Review of Decisions by the Universal Service Administrator by Acorn Public Library District, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15477 ¶ 5 (Wireline Comp. Bur. 2008) (establishing that submission of a 471 application within 14 days of the filing deadline is a procedural and not a substantive violation, and that it is “in the public interest to waive the FCC Form 471 deadline”).

¹¹ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order FCC 19-78, ¶ 176 (rel. Aug. 20, 2019) (*RHC Telehealth Order*).

¹² The Wireline Competition Bureau has delegated authority to grant waivers unless the request presents a “novel question of fact law or policy which cannot be resolved under outstanding precedents and guidelines.” 47 C.F.R. § 0.291. The Bureau routinely uses E-rate precedent to resolve RHC issues, including citing to the E-rate program’s *Academy of Math and Science* order for RHC appeals. *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 96-45, Public Notice, n.21 (Wireline Comp. Bur. Feb. 29, 2016).

¹³ *RHC Telehealth Order* at ¶ 176.

For these reasons, SHLB supports the Request for Waiver and recommends the Commission grant a waiver of the filing deadline so that Kellogg & Sovereign may submit the FY 2019 funding requests. Further, SHLB requests that the Commission allow RHC applicants the same 14-day grace period for filing their applications that is available to E-rate applicants.

We appreciate your consideration of our suggestions and comments.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." The signature is written in a cursive style with a clear, legible font.

John Windhausen, Jr.
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